

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal D-275-DB of 2003
Date of Decision : July 13, 2016

Buta

.....Appellant

VERSUS

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Ms. Amarpreet Kaur Sandhu, Advocate
as legal aid counsel
for the appellant.

Mr. S.S.Dhaliwal, Addl. A.G., Punjab.

T.P.S. MANN, J.

The appellant, namely, Buta son of Veeru was tried for committing the offence punishable under Section 302 IPC whereas his co-accused Anwar Masih son of Sadiq Masih was tried for the offence under Section 302 read with Section 34 IPC on the allegations that on 26.3.1999 at about 7.30 p.m. in the area of village Bhandal, and in furtherance of their common intention, they intentionally committed the murder of Gurpreet Singh. Buta was also tried for the offence punishable under Section 307 IPC whereas Anwar Masih under Section 307 read

with Section 34 IPC for causing injuries on the person of Gurbux Singh on the same day, time and place with such intention or knowledge and under such circumstances that if by that act they had caused the death of Gurbux Singh, they would have been guilty of culpable homicide not amounting to murder. Vide judgment and order dated 4.1.2003, learned Additional Sessions Judge, Gurdaspur acquitted accused Anwar Masih of the charges against him by giving him the benefit of doubt. However, the appellant was convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- and in default of payment of fine, to undergo rigorous imprisonment for one year. He was also convicted under Section 324 IPC instead of Section 307 IPC and sentenced to undergo rigorous imprisonment for two years. Both the substantive sentences were ordered to run concurrently.

The case of the prosecution is that complainant Devinder Singh, who was resident of village Ugru Khera and running a karyana shop in the village, was three brothers. He was the eldest, younger to him was Sukhwinder Singh, who was Granthi of Ramdas Gurdawara whereas Gurpreet Singh aged about 15 years and handicapped from his right leg was his youngest brother. Gurpreet Singh was learning the work of scooter repair at the shop of Ranjit Singh, mechanic, resident of

village Uguru Khera, at Bus Stand of village Bhandal for the last one month. On 26.3.1999, Lakhwinder Singh son of Harbans Singh, who was his cousin, being his father's sister's son and resident of Mastkot, had come to the village of the complainant to meet him. The complainant alongwith Lakhwinder Singh went to village Bhandal for some personal work and after doing their work, they went to the shop of Ranjit Singh, mechanic as they wanted to meet his brother Gurpreet Singh. Later on, the complainant, his brother Gurpreet Singh and cousin Lakhwinder Singh started for his village. The complainant and Lakhwinder Singh were on one cycle whereas Gurpreet Singh on another. One Gurbux Singh son of Massa Singh, resident of Kala Guraya was also following them on his own cycle. At about 7.30 p.m. when they reached near the field of Baljit Singh, resident of village Bhandal and were on the kacha path leading from village Bhandal to village Kala Guraya, then from the opposite side, Buta-appellant was seen coming while sitting on the rickshaw which was being pedalled by Anwar Masih and they were drunk. The complainant already knew them. When Anwar Masih just crossed the complainant, then Buta abused Gurbux Singh, who was coming behind them. Gurbux Singh asked Buta not to abuse him. On this Anwar Masih raised a *lalkara* exhorting Buta not to spare Gurbux Singh. Buta gave datar blow to Gurbux Singh

which hit him on his head. As a result Gurbux Singh fell down on the ground. Gurpreet Singh, younger brother of the complainant asked Buta and Anwar as to why they were causing injuries to Gurpreet Singh. Then, all of a sudden, Buta left Gurbux Singh and gave datar blows to Gurpreet Singh, hitting him on his forehead and head. As a result, Gurpreet Singh fell down on the ground and succumbed to the injuries. Both Buta and Anwar Masih also tried to inflict injuries to complainant and Lakhwinder Singh but they ran away and saved themselves. They started raising alarm. Both Buta and Anwar Masih swiftly left for Bhandal on their rickshaw. The complainant and his cousin Lakhwinder Singh had seen the entire occurrence. The raula raised by them attracted Kashmir Singh of village Kala Guraya and Jathedar Charan Singh of village Ugru Khera to the spot. Kashmir Singh removed Gurbux Singh in an injured condition on his scooter to Kalanaur Hospital. The motive behind the occurrence was that previously Gurbux Singh and Buta had quarrelled with each other and even on that day, they had exchanged abuses at the spot. After leaving his cousin Lakhwinder Singh to guard the dead body of his brother Gurpreet Singh, complainant Devinder Singh left for the Police Station to lodge the report. However, he came across SI Santokh Singh in the area of Bus Stand of village Bhandal with whom he got recorded his statement Ex. PF on 26.3.1999 at

10.20 p.m. On its basis, FIR No. 34 (Ex. PF/2) came to be registered by ASI Balwinder Singh at Police Station Kalanaur on 26.3.1999 at 11.00 p.m. which was completed on 27.3.1999 at 12.30 a.m. Special report sent through HC Joginder Singh was received by the Ilaqa Magistrate on 27.3.1999 at 4.00 a.m.

Further case of the prosecution is that SI Santokh Singh after sending statement Ex. PF to the Police Station went to the spot and found the dead body of Gurpreet Singh lying on the kacha path. He prepared inquest report Ex. PC and lifted blood stained earth by preparing a parcel and took it into possession vide memo. Ex. PG. A bi-cycle lying there was taken into possession vide memo. Ex. PH. Rough site-plan Ex. PM of the place of occurrence was prepared. The dead body was, thereafter, sent for post mortem. On 27.3.1999, SI Santokh Singh went to Civil Hospital, Gurdaspur and moved application Ex. PN on which the doctor declared Gurbux Singh fit to make statement. Thereafter, he recorded the statement of Gurbux Singh and took into possession his blood stained clothes by preparing a parcel vide memo. Ex. PO. On 1.4.1999, SI Santokh Singh held a naka on the bridge of a drain in the area of village Bhandal where both the accused came on rickshaw and were arrested. The rickshaw was taken into possession vide memo. Ex. PR. From the personal search of accused Buta, datar Ex.P2

was recovered which was taken into possession vide memo. Ex.PS/1.

Upon completion of investigation and presentation of challan followed by commitment of the case to the Court of Sessions, both the accused were charged for committing the offences under Sections 307/302/34 IPC to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Dr. Romesh Mahajan, Medical Officer, Civil Hospital, Gurdaspur, who testified that on 27.3.1999 at 12.15 p.m. he conducted post-mortem on the dead body of Gurpreet Singh and observed the following injuries:-

- “1. Incised wound of 8 cm x 4 cm in size present on right side of head over temporal region which cut the right pinna completely and extending over the right mastoid region behind the wound.

On dissection underlying bone was fractured, meninges were torn, brain matter also injured and subdural haemotoma was present.

2. Incised wound of 12 cm x 1 cm in size, C Shaped, present over left parietal region with curved portion facing behind. It was skull deep.

On dissection underlying parietal bone was

fractured and subdural haematoma was present.

3. Incised wound 5 cm x 1 cm in size present over right occipital region. On dissection no fracture of underlying bone was seen.
4. Incised wound 6 cm x 3 cm in size present on back over right scapula. On dissection injury was muscle deep. Blood vessels and nerves were cut.”

According to Dr. Romesh Mahajan, the cause of death was due to haemorrhage and shock due to injuries No. 1 and 2. All the injuries were ante-mortem in nature. The time that elapsed between the injuries and death was immediate and between death and post-mortem it was within 24 hours. He proved the copy of the post-mortem report Ex. PA.

PW2 Dr. Sudhir Kumar, Medical Officer, Civil Hospital, Gurdaspur testified that on 26.3.1999 at 10.55 p.m., he medico-legally examined Gurbux Singh and found the following injuries on his person:-

- “1. Incised wound 20 x 1 cm on the back side of head at the lower side of left ear level. The injury was horizontally placed. Fresh bleeding was present. X-ray was advised.
2. An incised wound 5.5 x 0.5 cm on the back of the head horizontally placed 5 cm below the

injury No.1. Fresh bleeding was present.
X-ray was advised.

3. An incised wound 6.0 x 0.5 cm outer side of face just anterior to left ear at its upper level.
4. An incised wound 1.0 cm x 0.3 cm on the upper side of left ear.
5. An incised wound 2 cm x 0.3 cm on the posterior side of left ear.
6. An incised wound 1 x 0.3 cm at the lower side of left ear.”

According to Dr. Sudhir Kumar, all the injuries were simple in nature, caused with sharp edged weapon and were of the duration of within six hours. He proved the copy of the medico-legal report Ex. PD.

PW3 HC Joginder Singh, who had taken the special report to the Ilaqa Magistrate, tendered in evidence his affidavit Ex. PE.

PW4 Devinder Singh and PW5 Gurbux Singh deposed about the ocular account of the occurrence.

PW6 Satnam Singh, Patwari, Halqa Bhandal, proved the scaled site-plan Ex. PJ of the place of occurrence.

PW7 Constable Amarjit Singh, who had taken the case property of the case to the office of the Chemical Examiner

on 30.3.1999, tendered in evidence his affidavit Ex. PK.

PW8 HC Jhirmal Singh who on the relevant date was posted as MHC and with whom the case property was deposited and later on he had sent the same to the office of the Chemical Examiner on 30.3.1999, tendered in evidence his affidavit Ex.PL.

PW9 SI Santokh Singh, who was the Investigating Officer, narrated the various steps taken by him during the investigation of the case.

When examined under Section 313 Cr.P.C., both the accused controverted the allegations levelled by the prosecution. Buta pleaded that he had been falsely implicated whereas Anwar Masih pleaded that he used to ply tonga and taking passengers from near the shop of Ranjit Singh. Ranjit Singh used to object to his parking of tonga near his shop and on that account he was falsely implicated. He had no concern with his co-accused Buta.

In their defence, the accused did not examine any evidence.

After hearing learned counsel for the parties and on going through the record, the trial Court acquitted Anwar Masih of the charges against him. The appellant was also acquitted under Section 307 IPC for causing injuries on the person of Gurbux Singh. Instead, he was held guilty under Section 324 IPC. He was, however, sentenced for the offences under Sections 302

and 324 IPC, as mentioned above.

Learned counsel for the parties have been heard and the evidence brought on record duly scanned with their able assistance.

It is submitted by learned counsel for the appellant that no such occurrence as alleged by the prosecution had taken place. Even otherwise, the injuries were inflicted upon Gurpreet Singh deceased and Gurbux Singh injured by unidentified person and the appellant falsely implicated in the case.

The occurrence in question had taken place on 26.3.1999 at 7.30 p.m. near the field of one Baljit Singh situated in the area of village Bhandal. The occurrence was witnessed by PW4 Devinder Singh, brother of deceased Gurpreet Singh and PW5 Gurbux Singh, who had received injuries in the occurrence. PW4 Devinder Singh has testified that at the time of the occurrence, he alongwith his cousin Lakhwinder Singh was returning to his village on a cycle whereas Gurpreet Singh deceased was on a separate cycle. PW5 Gurbux Singh was also following them on another cycle. When all of them reached near the field of Baljit Singh, a rickshaw pedalled by accused Anwar Masih came from the opposite side. Accused Buta was sitting in the said rickshaw. Both Anwar Masih and Buta were drunk. Buta accused abused Gurbux Singh who asked him not to do so. On

this, *lalkara* was raised by Anwar Masih exhorting Buta not to spare Gurbux Singh. Buta then gave 6/7 blows with a datar on the person of PW5 Gurbux Singh, who fell down. When Gurpreet Singh asked Buta and Anwar Masih as to why they were causing injuries to Gurbux Singh, Buta launched an attack on him as well and gave datar blows on his head and ear, who succumbed to those injuries at the spot. After the occurrence, PW5 Gurbux Singh was removed by Kashmir Singh on his scooter to Kalanaur hospital. After leaving his cousin Lakhwinder Singh to guard the dead body of Gurpreet Singh, Devinder Singh left for the Police Station. However, in the area of bus stand of village Bhandal, he came across SI Santokh Singh with whom he got recorded his statement Ex. PF on 26.3.1999 at 10.20 p.m. On its basis, FIR Ex.PF/2 came to be registered at Police Station Kalanaur at 11.00 p.m. which was completed one and half later i.e. at 12.30 a.m. The special report sent through HC Joginder Singh was received by the Ilaqa Magistrate at 4.00 a.m.

Similarly, PW5 Gurbux Singh has testified that at the time of the occurrence, he was going on a cycle to his village Kala Guraya and found accused Buta sitting on a rickshaw being pedalled by accused Anwar Masih. Both Buta and Anwar Masih were in a drunken condition. He asked Anwar Masih to give him a side. Upon this, accused Buta started abusing him. When

Anwar Masih exhorted Buta not to spare Gurbux Singh, Buta gave six injuries with the datar on his head and ear. As a result, he fell down. When Gurpreet Singh intervened, Buta gave three datar blows on his head, who died on account of the same at the spot.

Both PW4 Devinder Singh and PW5 Gurbux Singh have withstood the test of cross-examination and had stated in clear terms that it was accused Buta, who was armed with a datar at the time of the occurrence which he had wielded in giving injuries to PW5 Gurbux Singh and also to deceased Gurpreet Singh. Their testimonies are duly corroborated by the medical evidence. PW1 Dr. Romesh Mahajan, Medical Officer, Civil Hospital, Gurdaspur has deposed about conducting post-mortem on the dead body of Gurpreet Singh on 27.3.1999 between 12.15 p.m. and 1.30 p.m. Four injuries were found on the dead body. All the injuries were result of sharp edged weapon being used. All the injuries were on the head of deceased Gurpreet Singh. The probable time that elapsed between injuries and death was immediate and between death and post-mortem it was within 24 hours. Similarly, PW2 Sudhir Kumar, Medical Officer, Civil Hospital, Gurdaspur testified that on 26.3.1999 at 10.50 p.m., he had medico-legally examined Gurbux Singh and found six injuries. All were incised in nature and on his head. Duration of

injuries was within six hours. Injuries No. 3 to 6 were declared simple and on receipt of X-ray report, injuries No. 1 and 2 were also declared simple. Merely because he testified during his cross-examination that injuries No. 3 to 6 were superficial and possibility of theirs' being self suffered or suffered by friendly hand could not be ruled out is no ground to hold that Gurbux Singh had not received any injury or had fabricated the injuries on his person. No question was asked by the defence as regards injuries No. 1 and 2, which were on the back of the head of Gurbux Singh. Injury No.1 was having dimensions of 20 x 1 cm whereas in case of injury No.2 it was 5.5 x 0.5 cm. These two injuries, by no stretch of imagination, could be self suffered or suffered from a friendly hand. Thus, the medical evidence fully corroborates the ocular account.

After the incident had taken place on 26.3.1999 at 7.30 p.m., statement Ex. PF made by PW4 Devinder Singh was recorded by PW9 SI Santokh Singh at 10.20 p.m. On its basis, FIR came to be registered at 11.00 p.m. which was completed at 12.30 p.m. Even the special report was in the hands of the Ilaqa Magistrate at 4.00 a.m. From the aforementioned, it is made out that the FIR had been lodged with due promptitude and in the same, presence of the witnesses on the one hand and the accused, on the other, stood duly mentioned. Even the manner in

which the occurrence had taken place stood detailed therein. Under these circumstances, it cannot be said that the occurrence had not taken place in the manner as described by PW4 Devinder Singh and PW5 Gurbux Singh. Moreover, PW5 Gurbux Singh happened to be stamped witness of the occurrence and his presence at the spot at the time of the occurrence cannot be doubted.

Learned counsel for the appellant has submitted that the prosecution has miserably failed to establish that the appellant had the motive to commit the crime and, thus, the prosecution case is rendered doubtful. However, it has come in the evidence that appellant-Buta on the one hand and injured Gurbux Singh, on the other, had earlier quarrelled and when Buta saw Gurbux Singh coming on a cycle, he abused, assaulted and gave datar blows to him. When Gurpreet Singh objected, he was also assaulted by Buta, who caused datar blows to him as well. Therefore, the prosecution case cannot be rejected. Even otherwise, the motive always remains in the mind of the accused and it is very difficult to lead direct evidence to establish it as a matter of fact.

On the dead body of Gurpreet Singh, four injuries were noticed at the time of post-mortem. Three of them were on the head of the dead body whereas one was on the right scapula.

Cause of death was due to haemorrhage and shock on account of injuries No. 1 and 2. Injuries No. 3 and 4 had also contributed in causing the death. Thus, the appellant was responsible for committing the offence under Section 302 IPC. However, as all the injuries on the person of PW5 Gurbux Singh were declared to be simple in nature, the trial Court was justified in exonerating the appellant of the offence under Section 307 IPC and, instead, convicting him under Section 324 IPC.

In view of the above, no case is made out for any interference in the impugned judgment of conviction and order of sentence passed by the trial Court.

The appeal is without any merit and, accordingly, dismissed.

**(T.P.S. MANN)
JUDGE**

**(GURMIT RAM)
JUDGE**

July 13, 2016
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